

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JESS R GOURD**  
Claimant

**APPEAL NO. 08A-UI-01949-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COX MANUFACTURING COMPANY**  
Employer

**OC: 01/20/08 R: 03  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Cox Manufacturing Company (Cox), filed an appeal from a decision dated February 20, 2008, reference 01. The decision allowed benefits to the claimant, Jess Gourd. After due notice was issued, a hearing was held by telephone conference call on March 12, 2008. The claimant participated on his own behalf and with a witness Jackie Dimler. The employer participated by President Robert Cox and Office Manager Shelly Gross. Exhibits One, Two and Three were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Jess Gourd was employed by Cox Manufacturing from January 17, 2005 until January 21, 2008, as a full-time fabricator. He had received counselings from President Robert Cox in October 2007, for being no-call/no-show to work for several days due to being incarcerated. Another counseling on November 13, 2007, for being sent home the day before due to being at work under the influence of alcohol, and was also given a copy of the new employee handbook. On December 7, 2007, he was again counseled for being no-call/no-show to work the day before.

On January 18, 2008, a supervisor, Davy Claiser, notified Mr. Cox he believed the claimant had again come to work under the influence of alcohol. Mr. Cox observed the claimant's handling of a forklift and found it "aggressive," going faster than was safe, driving into a pile of steel, then taking an attachment off the forklift and throwing it into a pile of steel. The claimant then was involved in a verbal confrontation with Supervisor Dick Dalton, protesting someone else having been sent home. At that point Mr. Cox asked the claimant to leave and when Mr. Gourd attempted to continue the discussion, he was told to talk about it the next day.

It took several requests until the claimant finally did leave out the front door. But shortly thereafter the employer found he had come back in by another door and was not working but

talking with Mr. Dalton. He was again asked to leave and finally did when the supervisor escorted him out the door.

Jess Gourd has received unemployment benefits since filing a claim with an effective date of January 20, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer had given the claimant considerable leeway by not firing him after two incidents of being no-call/no-show to work and another of being under the influence of alcohol in the work place. Instead he had been counseled regarding what was expected of him and given an employee handbook which set out the expectations of the employer regarding his conduct.

In spite of the warnings the claimant conducted himself inappropriately on January 18, 2008. He argued with a supervisor, operated a forklift in an unsafe manner, refused to obey the instructions of Mr. Cox and leave the building when he was ordered to do so, and then was insubordinate by coming back into the building after finally agreeing to leave the first time. All of this shows a profound disregard of the of the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of February 20, 2008, reference 01, is reversed. Jess Gourd is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,926.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css